

REMARKS/ARGUMENTS

Reexamination and reconsideration of this application, withdrawal of the rejections, and formal notification of the allowability of all claims as now presented are earnestly solicited in light of the above amendments and remarks that follow. Claims 1, 3-10, 12-17, 19-26, and 28-36 are pending in the application. Independent claims 1, 17, and 33 have been amended to clarify that the smokable material comprises greater than about 90% tobacco based on the combined dry weight of the tobacco material and any non-tobacco filler material that may be present. Support for this amendment may be found throughout the specification, such as on page 23 and in the accompanying examples. Applicants respectfully submit that no new matter is introduced by these amendments.

The Examiner continues to reject all claims as anticipated by, or unpatentable over, U.S. Patent No. 5,129,408 to Jakob *et al.* Applicants respectfully traverse these rejections.

Applicants continue to maintain that the claims in their previous form were not anticipated by the Jakob patent. Independent claim 1 recites an aerosol forming material in intimate contact with the processed tobacco material. Similarly, independent claim 33 recites an aerosol forming material in intimate contact with a reconstituted tobacco material. In contrast, the Jakob reference describes a smokable material that comprises tobacco and an agglomerated matrix filler comprising an organic component and inorganic component. This matrix filler is not a tobacco material, and when the Jakob reference refers to inclusion of aerosol-forming materials, it is in the context of forming a mixture of such materials with the agglomerated matrix filler, not a reconstituted tobacco material. The Examiner cannot point to any section of the Jakob patent that suggests forming an intimate mixture of a reconstituted tobacco material and an aerosol forming material.

The only section referenced by the Examiner in this regard is column 4, lines 55-65, wherein the patent simply discusses various types of tobacco materials that can be used in the smokable material of segment 70 in Fig. 2. There is no suggestion in the reference to form an intimate mixture of the reconstituted tobacco material referenced in column 4 and an aerosol forming material. Rather, as noted in the previous response, all references to adding aerosol-

forming materials is in the context of forming a mixture of such materials with the agglomerated matrix filler. Accordingly, it is respectfully maintained by Applicants that an anticipation rejection of independent claims 1 and 33, or any claims dependent thereon, is improper.

Nonetheless, in order to expedite prosecution of the present application, Applicants have further amended independent claims 1 and 33 to recite that the smokable material referenced therein is at least 90% tobacco based on the total dry combined weight of tobacco and any optional non-tobacco filter material. This is clearly discussed in the specification, such as on page 23. Further, all of the examples in the specification describe various tobacco mixtures wherein little or no non-tobacco filler materials are utilized. This provides a further contrast to the Jakob patent, which is directed to a smokable filler material that comprises a mixture of tobacco and a significant amount of an agglomerated matrix that is a non-tobacco material. The Jakob reference clearly suggests mixtures of the agglomerated matrix with a tobacco material in amounts where the tobacco-containing filler material is present only up to about 75 weight percent and preferably far lower. In column 6, beginning at line 24, the Jakob patent describes mixtures of the agglomerated matrix filler material with other smokable materials. Beginning at line 40, the patent clearly recites an upper limit of 75 weight percent for tobacco-containing smokable filler material and expresses a preference for amounts only up to about 50 weight percent. The agglomerated matrix, which is again a non-tobacco material, is present up to about 80 weight percent, preferably 20 to about 60 weight percent. Accordingly, nowhere does the Jakob patent suggest a smokable material comprising greater than about 90 percent tobacco based on the combined dry weight of tobacco and non-tobacco filler material. In fact, the reference quite clearly caps the tobacco filler material at about 75% and preferably much lower. Accordingly, the Jakob patent cannot be viewed as anticipating the subject matter of independent claims 1 and 33, particularly in light of the amendments set forth above.

Applicants also respectfully submit that all claimed subject matter is patentably distinct from the Jakob reference. As note previously, the clear intent of the Jakob patent is to incorporate an aerosol forming material into an agglomerated matrix filler. There is no suggestion to directly mix an aerosol forming material with a reconstituted tobacco material as set forth in the pending claims. As taught in Applicants' specification, it has been surprisingly

discovered that incorporating an aerosol forming material into reconstituted tobacco can provide greatly increased loading of the aerosol-forming material as compared to more conventional methods of adding such materials to tobacco. There is certainly nothing in the Jakob patent to suggest this result. Instead, the focus of the Jakob patent is on forming mixtures of aerosol forming materials with non-tobacco filler materials such as the agglomerated matrix filler described therein. In fact, every example in the patent that includes incorporation of an aerosol forming material shows the inclusion of such materials during processing of the agglomerated matrix filler, not a tobacco material, and certainly not a reconstituted tobacco material.

Still further, as noted above, the pending claims now recite even further distinctions between the Jakob patent and the present invention. In particular, as noted above, the Jakob patent cannot be viewed as fairly teaching or suggesting the presently claimed smokable material, which is now recited as comprising greater than about 90% tobacco based on the combined weight of tobacco and non-tobacco filler materials. Instead, the Jakob patent is focused on the utilization of significant amounts of non-tobacco filler materials and, in fact, the main invention described in the Jakob patent is an agglomerated matrix material that does not include tobacco. Rather, the agglomerated matrix material is intended to form a non-tobacco filler material that can optionally be mixed with a tobacco material to form a smokable filler material. However, the relative amounts of tobacco and agglomerated matrix suggested in the Jakob patent would not result in the claimed invention because the tobacco in the smokable material would not be present at a concentration of greater than 90% by weight. Instead, the Jakob patent clearly expresses an intent to form mixtures where the agglomerated matrix material is present up to about 80 weight percent, and certainly no less than about 20 to about 60 weight percent. For at least the reasons set forth above, Applicants respectfully request reconsideration and withdrawal of all rejections based on the Jakob patent.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required

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therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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